



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/811,432

03/20/2001

Klaus Muller

732/000035

1490

26474

7590

12/17/2003

KEIL & WEINKAUF  
1350 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20036

EXAMINER

FERGUSON, LAWRENCE D

ART UNIT

PAPER NUMBER

1774

DATE MAILED: 12/17/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/811,432

Applicant(s)

MULLER ET AL.

Examiner

Lawrence D Ferguson

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is in response to the amendment mailed October 14, 2003.  
Claim 4 was cancelled and claim 1 was amended, rendering claims 1 and 5-6, with claims 12-13 withdrawn as a non-elected invention.

### ***Claim Rejections – 35 USC § 103(a)***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholas et al (U.S. 3,668,034) in view of Vinod (U.S. 5,965,232) for reasons previously stated in the Office Action submitted on October 14, 2003. Regarding the newly added limitation to claim 1, 'intermediate layer comprising thermoplastic,' Nicholas shows the intermediate bonding layer can be any thermoplastic material (column 2, lines 39-40).

***Response to Arguments***

4. Applicant's arguments to rejection made under 35 USC 103(a) as being unpatentable over Nicholas et al (U.S. 3,668,034) in view of Vinod (U.S. 5,965,232) have been considered but are found unpersuasive. Applicant argues Nicholas is utilized in very broad and general terms and points to the various embodiments of the Nicholas reference. Applicant shows the metallized film of Nicholas comprises a polyester film made of polyethyleneterephthalate (column 2, lines 29-30). Applicant seeks to narrow the scope of the Nicholas reference by ignoring that Nicholas discloses Nicholas discloses a layered material comprising a backing layer formed of thermoplastic (abstract, column 2, line 5 and column 2, lines 62-64). Applicant points to an embodiment of the disclosure teaching the intermediate layer to comprise vinyl polymers. Nicholas shows the intermediate bonding layer can be any thermoplastic material (column 2, lines 39-40). Applicant further argues the substrate layer of Nicholas does not disclose propylene homopolymer and pertains mainly to thermoplastic vinyl polymers. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Vinod teaches a layered composite material comprising a decorative layer, intermediate layer and lower layer coated with a protective coating (column 1, lines 39-41) where the coating is heat cured (column 5, lines 13-14) and the lower and

Art Unit: 1774

intermediate layers are made of polypropylene (column 7, lines 11-18). Applicant argues Nicholas does not disclose an intermediate layer comprising a non-woven composed of a polypropylene prepared in presence of a metallocene catalyst arranged thereupon. This argument is moot because Applicant has removed this claim limitation from instant claim 1. Applicant argues Nicholas does not disclose a decorative layer comprising a chromed metal layer. Examiner respectfully disagrees with this argument because Nicholas discloses the metallized film is made of chrome (column 1, line 41). Applicant argues Nicholas does not disclose a heat-cured layer. Examiner maintains that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Although Nicholas does not disclose a heat-cured layer, Vinod teaches a layered composite material comprising a decorative layer, intermediate layer and lower layer coated with a protective coating (column 1, lines 39-41) where the coating is heat cured (column 5, lines 13-14). Applicants argue the structure of the floor covering described by Vinod, which is carpet (column 1, line 20) differs essentially from the layered composite material of the instant invention. This is not true because the claimed invention is directed to a layered composite material, as Vinod is directed to a layered composite material comprising a decorative layer, intermediate layer and lower layer coated with a protective coating (column 1, lines 39-41) where the coating is heat cured (column 5, lines 13-14) and the lower and intermediate layers are made of polypropylene (column 7, lines 11-18). Furthermore, Applicant looks to the background of the invention which teaches conventional floor coverings such as carpets and vinyl flooring (column 1, lines 20-21).

Vinod's invention is directed to a layered composite material, which is taught in column 1, lines 39-47). Applicant argues the inventors of the present invention felt that it was not obvious to replace all known materials from Nicholas layered material by polypropylene. The opinion of the inventors is greatly appreciated; however, Applicant offers no support or evidence as to how or why the instant combination of Nicholas and Vinod is unobvious.

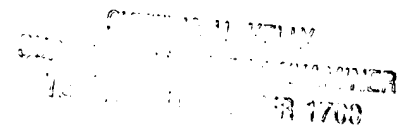
### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is (703) 305-9978. The examiner can normally be reached on Monday through Friday 8:30 AM – 4:30PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. Please allow the examiner twenty-four hours to return your call.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.



Lawrence D. Ferguson  
Examiner  
Art Unit 1774



STAMP: EXAMINER IN CHARGE, ART UNIT 1774, CYNTHIA KELLY, 12/1/09

